Merrit, 57 Ind. 34; *Maas* v. *Morgenthaler*, 120 N. Y. Supp. 1004; *Sanborn* v. *Mackin*, 20 Minn. 178; *Wright* v. *Young*, 6 Wis. 125; *Barnes* v. *Wood*, L. R., 8 Eq. 424. This view is founded on the principle that there is no new contract made by the court, but that the old one is enforced as far as possible. Some cases refuse to grant specific performance (either with or without abatement from the price) on the ground that to do so would enforce an agreement different from that entered into by the parties and that a court of equity should not compel a husband to procure the joinder of his wife, against her will, or suffer the consequences of a contempt. *Barbour* v. *Hickey*, 2 App. D. C. 207; *Hawralty* v. *Warren*, 18 N. J. Eq. 124; *Dunsmore* v. *Lyle*, 87 Va. 391; *Plum* v. *Mitchell*, 16 Ky. L. Rep. 162; *Clarke* v. *Reins*, 12 Gratt. 98. A great many cases refuse to allow any abatement in price for the outstanding dower interest, but grant specific performance where the vendee is willing to pay the entire contract price and accept a conveyance of such interest as the husband has. This would seem to be the most logical and equitable rule, and is undoubtedly supported at least by the numerical weight of authority. *Graybill* v. *Brugh*, 89 Va. 895; *Humphrey* v. *Clement*, 44 Ill. 299; *Watson* v. *Doyle*, 130 Ill. 415; *Cowan* v. *Kane*, 211 Ill. 572; *Steadman* v. *Handy*, 102 Va. 382; *Reilly* v. *Smith*, 25 N. J. Eq. 158; *Bogan* v. *Daugdrill*, 51 Ala. 312; *Cottrell* v. *Cottrell*, 81 Ind. 87; *Anderson* v. *Kennedy*, 51 Mich. 467; *Cady* v. *Gale*, 5 W. Va. 547; *Vindquest* v. *Perky*, 16 Neb. 284; *Hughes* v. *Antill*, 23 Pa. Super. Ct. 290; *Burk's Appeal*, 75 Pa. St. 141; *Lucas* v. *Scott*, 41 Ohio St. 636. Where the land agreed to be sold includes the homestead and the wife refuses to join, specific performance with abatement from price is generally denied upon the ground that such a contract is absolutely void. *Moses* v. *McClain*, 82 Ala. 370; *Phillips* v. *Stanch*, 20 Mich. 369; *Barnett* v. *Mendenhall*, 42 Iowa 296; *Kaiser* v. *Klein*, 29 S. D. 464; *Mundy* v. *Shellaberger*, 161 Fed. 503.

SPECIFIC PERFORMANCE—ABATEMENT FOR OUTSTANDING DOWER INTEREST.—Defendant, by a contract of sale, agreed to convey a "free and clear title" to plaintiff. He refused to perform, because his wife would not join in the deed or release her dower. Plaintiff brought a bill asking for specific performance of the contract, with abatement from price, or a bond of indemnity for the wife's dower interest. *Held*, that plaintiff was not entitled to the decree as prayed for. *Long* v. *Chandler*, (Del. 1914) 92 Atl. 256.

Admitting that as a general rule specific performance with abatement from price will be granted where a vendor is unable to convey a clear title, the court held that an outstanding dower right is of such uncertain valuation and quantum as to make the rule impracticable, saying, "The present money value of the dower right of a wife in her husband's life cannot be fairly and justly estimated, because the quantum of it is not ascertainable until his death, and because of the double contingency of her survivorship of him, and, therefore, there can be no decree for a conveyance by him with an abatement of the purchase price." Indemnity was not allowed, because "it is making for the parties an agreement which they did not make." The decision is at variance with that in the recent case of *Hirchman* v. *Forehan*, (Ark.

1914), 170 S. W. 98, noted above. Both cases are well supported by precedent, but it would seem that the decision in the principal case is the more logical and just, for the reasons above given. Other cases reach the same result by holding that a court of equity should not coerce the wife directly or indirectly, or make a decree which will compel her to surrender her free and untrammeled volition; or that the vendee, knowing that the vendor had a wife, took chances of her not signing the deed.

SURRENDER—INTENT AS THE BASIS FOR SURRENDERS BY OPERATION OF LAW.—K, a tenant of lands under a term for years, assigned his lease to "the M. Building Company" with his lessor's consent. After the Building Company had improved the property its corporate existence was successfully attacked on the ground that there was no law in Illinois under which it could organize for its avowed purposes. Beneficiaries under a trust of the reversion claimed a merger of the term in their reversion through a surrender by operation of law. *Held,* the assignment being void for want of an assignee, the term still remained in the original tenant although an equitable interest passed to those associated in the company. *Johnson* v. *Northern Trust Co.,* (Ill. 1914) 106 N. E. 814.

"Where a lessee for years accepts a new lease from his lessor, he is estopped from saying that his lessor had no power to make the new lease, and, as the lessor could not grant the new lease until the prior one had been surrendered, the acceptance of such new lease is, of itself, a surrender of the former one. Such surrender is the act of the law, and takes place independently of, and even in spite of, the intention of the parties." TAYLOR, LANDLORD AND TENANT, § 507. That author states as the general rule the doctrine of *Lyon* v. *Reed,* 13 L. J. Exch. 377, 8 Jur. 762, to the effect that the law will imply a surrender when the parties to a lease do some act inconsistent with the subsisting relation of landlord and tenant. So also 24 CYC. 1367. What was a satisfactory basis for Baron PARKE in *Lyon* v. *Reed,* supra, i. e., that a surrender operates by way of estoppel, has also proved satisfactory to a number of courts. *Welcome* v. *Hess,* 90 Cal. 507, 27 Pac. 369, 25 Am. St. Rep. 145; *Stern* v. *Thayer,* 56 Minn. 93, 57 N. W. 329; *Gault* v. *Sheppard,* 14 Ont. App. 203; *White* v. *Berry,* 24 R. I. 74, 52 Atl. 682; *Knight* v. *Williams,* [1901] 1 Ch. 256. But these courts were not confronted with the injustice which would ensue should the second lease fail to accomplish its purpose, should fail to pass the interest contemplated. Where this second situation is presented the courts have necessarily adopted a different attitude. As the presumption of a surrender arises from the acts of the parties, which are supposed to indicate an intention to that effect, it must follow, that where no such intention can be presumed without doing violence to common sense, the presumption cannot be supported. *Thomas* v. *Zumbalen,* 43 Mo. 471; *Smith* v. *Kerr,* 108 N. Y. 31, 15 N. E. 70, 2 Am. St. Rep. 362; *Coe* v. *Hobby,* 72 N. Y. 141, 28 Am. St. Rep. 120; *James* v. *Rushmore,* 67 N. J. L. 157, 50 Atl. 587; *Meeker* v. *Spalsbury,* 66 N. J. L. 60, 48 Atl. 1026; *Zick* v. *London Tramways,* [1908] 2 K. B. 12; *Schieffelin* v. *Carpenter,* 15 Wend. 400. For consideration in this connection an assignment with acceptance by the land-